THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24339 OF 2005

DATED 28th FEBRUARY, 2006

BETWEEN

Adupa Narender and others

… Petitioners

and

S.S.Mohanty and others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24339 OF 2005

and

C.C.No.154 OF 2006

COMMON ORDER:

This common order shall dispose of the writ petition as well as the contempt case arises out of interlocutory proceedings in the writ petition, and the petitioners and respondents in both the matters are the same.

The writ petition is filed by five persons seeking a writ of Mandamus declaring the action of respondents 1 and 2 in constructing a compound wall over Pocharam Gram Panchayat public road depriving the petitioners from accessing their properties as illegal and violative of Articles 14 and 21 of Constitution of India.

It is the case of the petitioners that they purchased small extents of house sites

under sale deeds, dated 16.10.2000. The land is comprised in survey No.15 (part) and survey No.17 (part) of Pocharam village. They allege that they obtained permission from Gram Panchayat in February, 2004 for construction of houses. The approach road for the layout, in which the petitioners have plots, is allegedly the Gram Panchayat public road of thirty feet width, which the petitioners have been allegedly using. They further allege that they are not able to carry building material to their plots as fifteen days ago the respondents closed the access by constructing a compound wall preventing access to the petitioners to their plots. They further allege that the first respondent acquired about Acs.723.25 guntas of land prior to 1981 in survey Nos.2, 6 to 10, 36, 41, 44, 45, 49 to 51 on the northern side of the petitioners' layout for developing satellite township. According to the petitioners, it was left undeveloped for several years but recently first respondent has taken up Singapore Township Project in order to have approach to the township, the first respondent developed a road leading from National Highway No.202. It is also allege that the Gram Panchayat filed W.P.No.9535 of 2005 questioning the action of the first respondent in constructing compound wall enclosing the road and when the same was dismissed, Gram Panchayat filed Special Leave Petition before the Supreme Court, which is pending. The petitioners also state that the second respondent after inspecting the area gave commitment for erecting a 'wicket gate' so as to provide access to the petitioners and other villagers to reach their properties. But, by reason of the construction of the compound wall, the property purchased by the petitioners has become inaccessible.

The matter was admitted on 21.11.2005 and this Court, by order of even date, in W.P.M.P.No.31270 of 2005 passed interim orders directing the respondents to leave sufficient place to enable the petitioners to use the existing public road. The petitioners filed C.C.No.154 of 2006 alleging that the respondents have disobeyed the interlocutory orders passed by this Court. In the meanwhile, respondents 1 and 2 have come forward with W.V.M.P.No.3396 of 2005 praying this Court to vacate the interim orders. As submissions for the purpose of all matters are same, the matters were heard finally with the consent of the rival parties and is being disposed of by this common order.

In the counter affidavit filed by the Executive Engineer of A.P.Housing Board (APHB), it is alleged that the layout filed by the petitioners is a fabricated document and it was never in existence. Therefore, it is stated that there is no thirty feet width road as shown in the layout plan filed by the petitioners. The petitioners purchased the plots only in 2000 and the road, which is claimed to be in existence by the petitioners, was never existed earlier. It is further sated that APHB owns about Acs.723.00 of land at Pocharam. In the first phase, an extent of Acs.130.00 of land is proposed to be developed and as there was no direct access to the lands of APHB from the main National Highway. An extent of Acs.4.24 guntas in survey No.98 of Annojiguda and survey Nos.13 and 14 of Pocharam was acquired under Award, dated 10.07.2002. This land was utilized for laying the road connecting the National Highway to Singapore Township and in March, 2005, the construction of compound wall was taken up on either side of the approach road. Some of the pattadars filed W.P.No.4047 of 2005 before this Court aggrieved by the construction of compound

wall. One Roop Singh Naik, Sarpanch of Gram Panchayat also filed W.P.No.9535 of 2005. Though initially interim order was passed in W.P.No.4047 of 2005, the same was vacated on 31.03.2005 by this Court. A writ appeal being W.A.No.984 of 2005 was filed and the Division Bench directed the District Collector to file a status report. Accordingly, after inspecting the area, District Collector filed a report. In view of the report of the District Collector, W.P.No.9535 of 2005 and Writ Appeal No.984 of 2005 were dismissed on 04.07.2005. The allegation that there was a village/Panchayat public road, which was an approach road for the petitioners' property in the layout, is denied. It is further stated that the petitioners have independent and separate access to their lands.

The petitioners have not filed any reply affidavit denying the counter averments. Therefore, it becomes clear that the points raised herein are covered by the orders of the Division Bench, dated 04.07.2005 referred to hereinabove. It is also clear that the layout filed by the petitioners was not approved, that there was no approach road to the APHB lands and that the petitioners have independent access road to their plots stand unrebutted.

The learned counsel for the petitioners has taken this Court through the report submitted by the District Collector, Ranga Reddy District pursuant to orders of this Court in writ petition No.9535 of 2005. The District Collector has referred to various contentions and allegations made by the Sarpanch of Pochaaram and other villagers, and reported that on either side of APHB approach road, there are agricultural lands and there is no necessity for opening any road as the fields are well-connected to their village. The Division Bench considered this aspect of the matter and rejected the claim observing that, "since the road has been purchased by the users for their own use, it is a private land and the petitioner has got no grievance if the respondents are constructing a wall over it". The subject matter of the writ petition before the Division Bench and the subject matter in this writ petition are the same and the contentions raised therein were also the same. Though the earlier Judgment is not *inter partes,* it is still binding on this Court because what is claimed is a right to use the land as a road and in this writ petition, the question cannot be allowed to be re-agitated.

The writ petition and the contempt case, for the above reasons, are accordingly dismissed. No costs.

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(V.V.S.RAO,J)

28.02.2006

pln